IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.8299 OF 2006**

Shridhar Vasant Kulkarni. ... Petitioner

Vs.

The Municipal Corporation for Greater Mumbai & Anr. ... Respondents

Mr. Ajit Karwande for the petitioner.

Mr. A.S. Bhor for respondent 1.

Mr. R.R. Arolkar for respondent 2.

Mr. Shrirang H. Kulkarni – respondent 2 is present in the court.

**CORAM : SMT. RANJANA DESAI &**
**SMT. ROSHAN DALVI, JJ.**

**DATED : NOVEMBER 21, 2007.**

**P.C.:-**

1. The petitioner has challenged in this petition notice dated 14/1/2005 issued by respondent 1 under section 55(1) of the Maharashtra Regional & Town Planning Act, 1966 to the petitioner. The notice indicates that the petitioner has erected a wooden

partition in shop No.3 and created two shop premises. The notice calls upon the petitioner to remove the wooden partition in shop No.3 so as to bring the shop to its original position.

2. We have heard learned counsel appearing for the petitioner, at some length. He contended that the wooden partition is there right from the inception i.e. it exists from the time when the building was constructed. The building is stated to have been constructed in the year 1969-70. He has drawn our attention to a plan of the said building for the year 1983. He states that in the said plan, a wooden partition is shown and, therefore, this partition is there right from the beginning. This is seriously disputed by learned counsel appearing for respondent 1. An affidavit in reply is filed by Mr. Mohmad Shamim Mohmad Ebrahim A.E. (B & F), K/E Ward of respondent 1. It is stated in the said affidavit that the concerned Engineer attached to K/East Ward of respondent 1 on usual round detected the site at Samadhan Shop No.3, Hanuman Road, Ganesh Chowk, Vile Parle (East), Mumbai – 400 057 in the first week of January, 2005 when it was found that the construction of wooden partition in shop No.3 was carried out without permission of the competent authority. It is further stated that in response to

the said notice, the Assistant Municipal Commissioner K/East Ward received letter dated 17/1/2005 from the petitioner. However, the petitioner was not able to submit any authentic documents to show that the wooden partition carried out in shop No.3, is with the permission of the competent authority.

3. Learned counsel appearing for the petitioner submits that necessary licences have been issued to the petitioner to conduct business in the shop premises by the concerned authorities. In our opinion, this is entirely a different matter. So far as the creation of two shop premises are concerned, it is necessary for the petitioner to take appropriate permission from the competent authority. Otherwise, such construction would lead to violation of DC Regulations and Building Bye-laws. It is pertinent to note that whereas the building is constructed during 1969-70, the plan which is shown to us is of the year 1983. In such circumstances, we cannot interfere with the impugned notice. However, if the petitioner so desires, he may make appropriate application to the competent authority for necessary permission along with all the necessary documents in support of his claim and if such an application is made, the competent authority may pass appropriate

order in accordance with law.

4. We make it clear that we have not expressed any opinion on the merit of the matter. The petition is disposed of.

**[SMT. RANJANA DESAI, J.]**

**[SMT. ROSHAN DALVI, J.]**